

**EVIDENCE — Prior Convictions — Defendant must have had counsel when he received his prior convictions for them to be allegeable — Revised 3/2010**

For a prior conviction to be allegeable, the defendant must either have had counsel at the time the previous conviction was obtained, or have validly waived his right to counsel. If a defendant was denied his right to counsel under the Sixth Amendment when he was convicted of the prior felony, the prior conviction may not be used to enhance the defendant's sentence. *Burgett v. Texas*, 389 U.S. 109, 114-115 (1967). However, there is a presumption that all judgments were obtained constitutionally. *State v. McCann*, 200 Ariz. 27, 30, 21 P.3d 845, 848 (2001).

If there is a question as to whether a defendant was afforded the right to counsel in a prior proceeding giving rise to an alleged conviction, the case may be remanded to the trial court to determine that issue. *State v. White*, 118 Ariz. 279, 280, 576 P.2d 138, 139 (App. 1978). A mere assertion by a defendant that he or she was previously convicted without benefit of counsel is not sufficient to override a conviction, absent some offer of proof by the defendant that he was denied the constitutional protections. *State v. Moran*, 151 Ariz. 373, 377, 728 P.2d 243, 247 (1986). If the defendant did not challenge his prior conviction in the trial court on the basis that it was an uncounseled conviction, that prior conviction is entitled to a presumption of regularity for purposes of sentencing enhancement. *State v. Anderson*, 160 Ariz. 412, 415, 773 P.2d 971, 974 (1989); *State v. Marty*, 166 Ariz. 233, 238, 801 P.2d 468, 473 (App. 1990).